

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16986
[Redacted],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On October 10, 2002, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) asserting an Idaho income tax deficiency, plus late-filing penalty and interest, in the total amount of \$412,222 for the 1987 through 2000 taxable years. On October 29, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers have not requested an informal hearing before the Commission and have not provided any additional information or explanation to support their protest. Rather, the taxpayers have elected to have the Commission decide this matter based on the record as it now stands.

This is a domicile case. [Redacted] have petitioned the Tax Commission for a redetermination of a tax deficiency notice that asserted that Mr. and Mrs. [Redacted] were domiciled in, and therefore residents of, the state of Idaho during the 1987 through 2000 taxable years. The [Redacted] contend that during this time they were actually domiciled in, and residents of [Redacted]. The facts necessary to determine whether Mr. and Mrs. [Redacted] were truly domiciled in Idaho or [Redacted] during the years under review are quite sketchy. This is due in part to the large number of years involved in this domicile audit (going back to 1987), and in part on the [Redacted]' unwillingness to provide any information or explanation to support their claim of [Redacted] residency. Fortunately, the Tax Commission's Tax Discovery Bureau has been able to obtain some relevant information such as real property records and phone

records, and has also conducted several witness interviews. However, as discussed in greater detail below, much of the facts and circumstances surrounding Mr. and Mrs. [Redacted]' choice of domicile remain clouded.

What is known is that in September 1967, [Redacted] purchased a home located at [Redacted], Boise, Idaho. [Redacted] passed away in 1983. Several years later [Redacted] married his current wife, [Redacted]. On July 26, 1991, [Redacted] quitclaimed the home at [Redacted] to himself and [Redacted] as husband and wife with rights of survivorship. [Redacted] have owned the home at [Redacted] ever since.

Microfiche records of the Idaho State Tax Commission show that [Redacted] filed Idaho resident individual income tax returns for 1975, 1976, and 1977 listing his address as [Redacted]Boise, Idaho. No Idaho income tax return was filed by Mr. [Redacted] for 1978. He filed Idaho resident income tax returns for 1979 through 1981 using a [Redacted] post office box as his address. Mr. [Redacted] filed a nonresident or part-year resident Idaho return for 1982 using a [Redacted] address. Since 1982 Mr. [Redacted] has not filed an Idaho individual income tax return. He has, however, continued to own the home at [Redacted], Boise, Idaho, and, according to at least two neighbors, he and [Redacted] continue to reside at that residence for up to six months per year.

In late 2001 the Tax Discovery Bureau of the Idaho State Tax Commission sent an Idaho residency form letter and questionnaire to [Redacted] seeking additional information regarding their residency status for the years 1995 through 1999. The taxpayers declined to answer the questionnaire, maintaining instead that they were residents of [Redacted] and that answering the specific questions posed by the Idaho State Tax Commission's Tax Discovery Bureau was unnecessary. The Tax Discovery Bureau then issued the Notice of Deficiency Determination

that is the subject matter of this administrative protest. In that Notice of Deficiency Determination, the Tax Discovery Bureau has asserted that Mr. and Mrs. [Redacted] were domiciled in Idaho during 1987 through 2000. The taxpayers dispute this finding, claiming that during the years at issue they were residents of the State of [Redacted], residing at [Redacted], Anchorage, Alaska. They also assert that they spend the winter in Arizona at their home at [Redacted] Gold Canyon, Arizona.

Under Idaho's income tax laws, a resident of this state is required to report and pay income tax on all of his or her taxable income regardless of source. See Idaho Code § 63-3002. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. During the 1987 through 1995 taxable years, the term "resident" was defined in the Idaho tax laws as follows:

**Resident.** – The term "resident," for income tax purposes, means any individual who:

- (a) Has resided in this state for the entire taxable year; or
- (b) Is domiciled in the state of Idaho, . . . .

Idaho Code § 63-3013 (1989 & Supp. 1995). Effective for tax years beginning on or after January 1, 1996, the Idaho Legislature changed the definition of the term resident. The Idaho law now reads as follows:

**Resident.** – (1) The term "resident," for income tax purposes, means any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Idaho Code § 63-3013 (1996 & Supp. 1999).

Domicile is defined in the Tax Commission's Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.2 (2001). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Idaho Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996) (The Tax Commission's regulation defining domicile is consistent with prior holdings of the Idaho Supreme Court, "with the element of intent divided into two parts.") Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a

whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). See generally, Restatement, Second, Conflict of Laws § 19 comment c (1971). Although not entirely clear, it appears that under Idaho law a change in domicile must be established by a preponderance of the evidence. See Ramsey v. Ramesy, 96 Idaho 672, 535 P.2d 53 (1975).

A person's domicile will normally be that place where they have their true, fixed and permanent home. The term "home" as used in the Restatement, Conflicts of Law 2d, means "the place where a person dwells and which is the center of his domestic, social and civil life." Rest., Conflicts of Laws 2d, § 12. The Restatement goes on to provide that "[d]omicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place." Rest., Conflicts of Laws 2d, § 11(1). The comments to this section of the Restatement emphasizes that a person's domicile is usually that person's home.

"A person's domicil is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicil of choice, and in such instances the law may assign them as their domicil a place where their home is not located. (see §§ 22-23). The rule applicable to a person who has two or more dwelling places is stated in § 20.

Rest., Conflicts of Laws 2d, § 11(1), comment 1a. Those comments go on to provide that "[w]hen a person has one home and only one home, his domicil is in the place where his home is, except as stated in § 16, Comment c and §§ 22-23, relating to domicil in a vehicle and to persons who lack legal capacity to acquire a domicil of choice." Rest., Conflicts of Laws 2d, §

11(1), comment 1h. Thus, with only a few exceptions, a person who only has one home will be domiciled at that place where his home is.

It is not uncommon for the person whose domicile is at issue to have two or more homes or residences, any of which might be considered his principal home or domicile. The Restatement, Conflict of Laws 2d, provides a very useful discussion of domicile of choice where an individual has more than one residence. Section 20 of the Restatement provides as follows: “When a person with capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home.” The comments to that section of the Restatement also provide some helpful guidance in those cases where the person has two dwelling places, either one of which could conceivably be his principal home. For instance, comment b provides in part as follows:

*b.* If a person has two dwelling places, any one of the following situations may arise:

1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicil will be at the dwelling place which is his home.

2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person’s principal home. In this case his domicil is at the principal home. As between two homes, a person’s principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (country life, for example, as opposed to city life) more conducive to the person’s tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person’s own feelings towards the dwelling place are of great importance.

His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).

. . . .

3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicil remains at that one of the two dwelling places which was first established. This is because a domicil, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Rest., Conflict of Laws 2d, § 20, comment b.

If an individual has more than one home or dwelling that could be considered his or her primary home, factors that may be considered in determining which dwelling is the individual's true domicile include the following:

1. The nature and use of the home, such as whether it is used as a "vacation home," "second home," or "summer home."
2. Whether the home is owned, rented, or provided free of charge.
3. The size of the home. Generally, as between two or more homes, the larger home is more likely to be considered the individual's principal or primary home.
4. Value of the home. Generally, as between two or more homes, the more valuable home is more likely to be considered the individual's principal or primary home.
5. How much time is spent at each home. Generally, as between two or more homes, the home where the individual spends the greater amount of time is more likely to be considered that individual's principal or primary home.
6. Which home the individual's spouse or minor children view as their primary home. Generally, as between two or more homes, the home that the individual's spouse or minor children regard as their primary home is more likely to be considered that individual's principal or primary home.
7. Which home the individual keeps his pets, valuable artwork, photo albums, hobby equipment, collectibles, and other "near-and-dear" items. Generally, as between two or more homes, the home where the individual maintains most of his "near-

and-dear” items is more likely to be considered that individual’s principal or primary home.

In the present case, Mr. and Mrs. [Redacted] have three homes that could potentially be their primary home and domicile. Those homes are located in [Redacted], Idaho, [Redacted] and the [Redacted]. Unfortunately, Mr. and Mrs. [Redacted] have not provided the Tax Commission with any information relating to these three homes and, as a result, it is difficult to know for certain which of the homes is truly the [Redacted]’ primary home. However, based on the information currently in the file, the Commission finds that the home located in Boise, Idaho, was most likely the [Redacted]’s primary home during 1987 through 2000. Factors that lead to this conclusion include the following:

- [Redacted] has owned the home at [Redacted], either individually or jointly, since 1967. Thus, for at least the past thirty-five years Mr. [Redacted] has continually owned a residence in Boise, Idaho. Furthermore, it does not appear that the [Redacted] home has ever been offered for sale or rented out to a third party.
- Up through at least 1982 Mr. [Redacted] has filed Idaho resident income tax returns, listing his mailing address as either the [Redacted] home, or a post office box in [Redacted]. Thus, prior to 1983, Mr. [Redacted] has held himself out as an Idaho resident and the burden is now clearly on Mr. [Redacted] to establish a change of domicile from his Boise home to his [Redacted], home.
- On April 13, 1981, [Redacted] filed with the Ada County Assessor’s Office an Idaho “Homeowners Exemption” form, claiming the homeowner’s property tax exemption on the home she and [Redacted] owned at [Redacted], Boise, Idaho. The homeowner’s property tax exemption only applies to owner-occupied real property that is being used as the owner’s primary residence. See Idaho Code § 63-602G(2)(a) (“The exemption . . . may be granted only if . . . [t]he residential improvements are owner-occupied and used as the primary dwelling place of the owner . . . .”). That homeowner’s property tax exemption has never been removed from the [Redacted] home. Thus, from 1981 until the present [Redacted] (and from July 26, 1991 to the present both [Redacted]) has accepted the benefit of the homeowner’s property tax exemption, which is specifically limited to the owner’s primary residence.
- According to the records of [Redacted] Personal Property Tax Assessment Unit, Mr. and Mrs. [Redacted] owned their home at [Redacted], [Redacted] from September 1993 until July 2002, when the home was sold to Mr. [Redacted]’s



son, [Redacted]. There is nothing in the Tax Commission's files to indicate that Mr. and Mrs. [Redacted] owned another residence in [Redacted] any time prior to September 1993. Thus, at best, the [Redacted] home could have been the [Redacted]' primary home and domicile only since September, 1993.

- According to at least two neighbors ([Redacted]), Mr. and Mrs. [Redacted] generally spend five or six month a year (usually from spring until late fall) at their Boise home. These statements are consistent with the long distance phone records obtained by the Tax Commission relating to Mr. and Mrs. [Redacted]' Boise residence. During 1998, there were no long distance phone calls made from the [Redacted]' Boise home from January 1, 1998 through April 10, 1998, or from October 11 through the end of the year. However, from April 11 through October 10, there were a number of long distance calls made from the Boise home. Phone records for 1999 and 2000 show a similar pattern. Thus, it appears that Mr. and Mrs. [Redacted] regularly spend approximately 5 or 6 months per year at their Boise home. Most of the rest of their time appears to be spent at their Arizona home.
- Virtually nothing is known about the [Redacted]'s [Redacted] home. However, the [Redacted] Department of Revenue has confirmed that Mr. and Mrs. [Redacted] have never filed [Redacted] state income tax returns, so it seems unlikely that they consider their [Redacted]home to be their primary home and domicile. It appears to be more akin to a "winter home" where the [Redacted] go to enjoy the milder climate of [Redacted].

Based on the factors listed above, the Commission finds that Mr. and Mrs. [Redacted] have not established the necessary intent to abandon their Idaho domicile. While Mr. and Mrs. [Redacted] may spend a few days each year at their home in [Redacted] there is nothing in the record before the Tax Commission to support the [Redacted]' contention that they intended to abandon their Idaho domicile or that they intended to make their [Redacted] home their true domicile. Rather, it appears that their primary home and domicile remains at the [Redacted] house that Mr. [Redacted] has owned since 1967, that he and [Redacted] continue to occupy for a substantial portion of each year, and that he and [Redacted] have continued to claim as their primary home for Idaho property tax exemption purposes. In short, because Mr. and Mrs. [Redacted] have not established the necessary intent to abandon their Idaho domicile, they remain residents of Idaho during each of the 1987 through 2000 taxable years.

WHEREFORE, the Notice of Deficiency Determination dated October 10, 2002, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following taxes, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1987	\$5,426	\$1,357	\$7,642	\$14,425
1988	6,463	1,616	8,325	16,404
1989	6,568	1,642	7,671	15,881
1990	10,318	2,580	10,813	23,711
1991	8,831	2,208	8,194	19,233
1992	10,035	2,509	8,106	20,650
1993	24,182	6,046	16,982	47,210
1994	15,017	3,754	9,406	28,177
1995	15,054	3,764	8,120	26,938
1996	18,963	4,741	8,655	32,359
1997	17,886	4,472	6,606	28,964
1998	48,566	12,142	14,191	74,899
1999	21,624	5,406	4,745	31,775
2000	24,976	6,244	3,479	<u>34,699</u>
TOTAL AMOUNT DUE				<u>\$415,325</u>

Interest is calculated through March 31, 2003, and will continue to accrue at the rate set out in Idaho Code § 63-3045(6)(b).

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

### CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

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